

## Message Text

PAGE 01 STATE 266737

43

ORIGIN EB-07

INFO OCT-01 ISO-00 EUR-12 JUSE-00 SIG-01 CIAE-00 COME-00

DODE-00 DOTE-00 FMC-01 INR-07 NSAE-00 SAL-01 CG-00

DLOS-06 OES-06 L-03 EA-07 NEA-10 IO-13 /075 R

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EB/IFD/BP:TSCLENKER

EUR/RPE:ASENS

JUSTICE:TAIUVALASIT

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R 290107Z OCT 76

FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY BRUSSELS

AMEMBASSY PARIS

AMEMBASSY STOCKHOLM

AMEMBASSY THE HAGUE

AMCONSUL HAMBURG

USMISSION OECD PARIS

INFO AMEMBASSY COPENHAGEN

AMEMBASSY OSLO

AMEMBASSY TOKYO

AMEMBASSY ATHENS

AMEMBASSY HELSINKI

AMEMBASSY LISBON

AMEMBASSY BERN

AMEMBASSY LUXEMBOURG

AMEMBASSY MADRID

AMEMBASSY OTTAWA

AMEMBASSY REYKJAVIK

AMEMBASSY VIENNA

AMEMBASSY WELLINGTON

AMEMBASSY ROME

USMISSION EC BRUSSELS

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PAGE 02 STATE 266737

AMEMBASSY CANBERRA

AMEMBASSY DUBLIN

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E. O. 11652: N/A

TAGS:EWWT

SUBJECT:JUSTICE DEPARTMENT INVESTIGATION OF OCEAN CARRIERS

REF: STATE 256884

1. REPRESENTATIVES OF BRITISH, FRENCH, GERMAN, BELGIAN, DUTCH, AND SWEDISH EMBASSIES MET OCTOBER 27 WITH REPRESENTATIVES OF DEPARTMENTS OF JUSTICE AND STATE FOR INITIAL CONSULTATIONS ON NORTH ATLANTIC CARRIERS CASE. BRITISH EMBASSY REPRESENTATIVE (LORD BRIDGES), ACTING AS INFORMAL GROUP SPOKESMAN, POSED BASIC QUESTIONS TROUBLING EUROPEANS, AND JUSTICE OFFICERS RESPONDED IN DETAILED AND FORTHCOMING MANNER.

2. FIRST QUESTION CONCERNED A SPEECH DELIVERED WEEK OF OCTOBER 11 BY DEPUTY ASSISTANT ATTORNEY GENERAL JONATHAN ROSE, WHICH POSED FAR-REACHING QUESTIONS ABOUT CONFERENCE SYSTEM AND MARITIME REGULATORY STRUCTURE. EUROPEANS FEARED THAT ROSE SPEECH WAS INDICATION THAT, DESPITE REPEATED ASSURANCES TO THE CONTRARY, CURRENT INVESTIGATION OF NORTH ATLANTIC CARRIERS IS PART OF BROAD JUSTICE DEPARTMENT ATTACK ON CONFERENCE SYSTEM. ROSE HIMSELF ATTENDED MAJOR PART OF OCTOBER 27 MEETING AND EXPLAINED THAT HIS SPEECH REFLECTED JUSTICE'S ROLE AS ADVOCATE OF

LONG-RUN PRO-COMPETITIVE CHANGES IN REGULATORY LAWS AND AS PARTICIPANT IN A GENERAL ADMINISTRATION POLICY OF EXAMINING ENTIRE EXISTING REGULATORY STRUCTURE. ROSE STRESSED THAT HIS SPEECH WAS ONLY RAISING BASIC QUESTIONS, THAT JUSTICE DOES NOT YET HAVE A POLICY ON THE CONFERENCE SYSTEM, AND THAT CURRENT INVESTIGATION RELATES ONLY TO POSSIBLE PAST VIOLATIONS OF ANTI-TRUST LAWS AND  
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PAGE 03 STATE 266737

HAS NO CONNECTION WITH FUTURE POLICY STUDIES. JUSTICE STRESSED THAT IT WOULD BE ILLEGAL TO USE INFORMATION GATHERED IN CURRENT INVESTIGATION FOR ITS POLICY STUDY OF MARITIME REGULATION.

3. CONCERNING RELEASE OF DOCUMENTS LOCATED ABROAD, LORD BRIDGES ANNOUNCED THAT HMG ON OCTOBER 26 INVOKED ITS POWERS TO PROHIBIT SHIPPING LINES FROM COMPLYING WITH SUBPOENAS INsofar AS THEY RELATE TO DOCUMENTS LOCATED WITHIN JURISDICTION OF UK. BRIDGES EMPHASIZED, HOWEVER, THAT BRITISH DECISION ONLY "HOLDING OPERATION" AND THAT AFTER CONSULTATIONS, HMG WOULD DECIDE WHETHER

TO CONTINUE PROHIBITION. SWEDISH REPRESENTATIVE NOTED THAT HIS GOVERNMENT HAD NOT YET DECIDED WHETHER TO INVOKE SIMILAR POWERS. FRENCH REPRESENTATIVE STATED THAT GOF HAS "STRONGLY DENIED" REQUEST BY ATLANTIC CONTAINER LINE FOR WAIVER OF FRENCH PROHIBITION OF RELEASE OF DOCUMENTS, BUT NOTED THAT SOME TYPE OF PARTIAL WAIVER MIGHT BE POSSIBLE. BELGIAN AND FRG REPRESENTATIVES INDICATED SIMILAR FLEXIBILITY ON POSSIBLE RELEASE OF DOCUMENTS. JUSTICE REPRESENTATIVES EMPHASIZED POSSIBLE BENEFITS TO COMPANIES OF COOPERATION IN PRODUCING DOCUMENTS AND ALSO NOTED THAT SINCE 80 PERCENT OF EVIDENCE OBTAINABLE WITHIN U.S., NON-PRODUCTION OF DOCUMENTS LOCATED OVERSEAS WOULD NOT AFFECT OUTCOME OF INVESTIGATION BUT WOULD MERELY CREATE POSSIBLE DISTORTION EFFECT.

4. JUSTICE REPRESENTATIVES STATED THAT DESPITE OCTOBER 27 DATE, JUSTICE REALIZES COMPANIES ARE AWAITING DECISIONS BY THEIR GOVERNMENTS AND THAT JUSTICE RECOGNIZES IT MAY HAVE TO WAIT 2-3 MORE WEEKS FOR SUCH DECISIONS. JUSTICE REPRESENTATIVES ALSO STATED THAT IF JUSTICE DECIDED TO CHALLENGE ANY EUROPEAN RESTRICTIONS IN COURT, IT WOULD PROVIDE NOTICE TO THE GOVERNMENT CONCERNED. LORD BRIDGES NOTED THAT SUCH A CHALLENGE WOULD BE "EXTREMELY SERIOUS MATTER" AND URGED AMPLE ADVANCE NOTICE. JUSTICE AGREED TO PROVIDE EARLY NOTICE AND STRESSED THAT IT DOES NOT SEE SUCH JURISDICTIONAL CHALLENGE AS LIKELY.

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PAGE 04 STATE 266737

5. IN DISCUSSING PRODUCTION OF DOCUMENTS, BRIDGES ALLUDED TO ALLEGEDLY BURDENSOME NATURE OF JUSTICE'S DOCUMENT REQUEST, ASKING WHETHER A FIVE-PAGE LIST OF ITEMS SUBJECT TO SUBPOENA WAS REALLY NECESSARY. JUSTICE REPRESENTATIVES EXPLAINED THAT ESTABLISHING AN ANTI-TRUST CASE WAS LIKE ASSEMBLING A MOSAIC FROM MANY SMALL PIECES BUT NOTED THAT COMPANIES CAN SHORTEN INVESTIGATION (AND NEED FOR DOCUMENTS) BY PRODUCING WITNESSES TO EXPLAIN WHAT HAS OCCURRED. JUSTICE ALSO STRESSED THAT THE LENGTH OF THE SCHEDULE OF DOCUMENTS DID NOT DETERMINE THE NUMBER OF DOCUMENTS; THE NUMBER OF DOCUMENTS TO BE PRODUCED DEPENDED ON THE EXTENT OF A COMPANY'S INVOLVEMENT IN SECRET AGREEMENTS. JUSTICE ALSO EXPLAINED THAT IT HAS BEEN NEGOTIATING WITH THE COMPANIES' ATTORNEYS TO ELIMINATE UNNECESSARY DOCUMENTS. SWEDISH REPRESENTATIVE ALSO ASKED WHETHER JUSTICE COULD PROVIDE A SYNOPSIS OF INFORMATION ALREADY OBTAINED, SO THAT PRIORITIES FOR PROVIDING DOCUMENTS LOCATED ABROAD COULD BE ESTABLISHED. JUSTICE REPLIED THAT GRAND JURY SECRECY RULED OUT PROVIDING SUCH A SYNOPSIS BUT SAID

THAT SOMETIMES IT IS POSSIBLE TO ESTABLISH PRIORITIES FOR THE PRODUCTION OF DOCUMENTS (WITHOUT WAIVING THE RIGHT TO REQUEST ADDITIONAL DOCUMENTS LATER).

6. EXPRESSING GENERAL EUROPEAN CONCERN, LORD BRIDGES ASKED WHAT INVESTIGATION WAS ABOUT, WHY CRIMINAL RATHER THAN CIVIL SANCTIONS BEING USED, AND WHERE INVESTIGATION LIKELY TO LEAD. (BRIDGES STRESSED, HOWEVER, THAT ;E NOT DEFENDING COMPANIES AND WAS IN NO POSITION TO JUDGE THEIR GUILT OR INNOCENCE.) IN RESPONSE, JUSTICE DESCRIBED IN DETAIL EVOLUTION OF CASE FROM INFORMAL EXAMINATION OF SHIPPER COMPLAINTS TO CIVIL INVESTIGATION OF LIQUOR TRADE TO BROAD CRIMINAL INVESTIGATION OF NORTH ATLANTIC SHIPPING AND OUTLINED RATIONALE BEHIND MAJOR PARAGRAPHS OF SCHEDULE OF DOCUMENTS. JUSTICE REPRESENTATIVES EXPLAINED THAT WHILE ANTI-TRUST LAWS CAN BE ENFORCED BY CIVIL OR CRIMINAL SANCTIONS, JUSTICE NORMALLY USES CRIMINAL SANCTIONS WHEN SECRET AGREEMENTS ARE SUSPECTED AND WHERE ALLEGED VIOLATION OF THE LAW IS NOT INADVERTENT (I.E., WHERE PARTIES INVOLVED AWARE THAT WHAT THEY ARE DOING IS FORBIDDEN). WHILE THIS LIMITED OFFICIAL USE  
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PAGE 05     STATE 266737

INVESTIGATION BEGAN AS A CIVIL CASE, EVIDENCE OBTAINED IN EARLY STAGES CONVINCED JUSTICE THAT SWITCH TO CRIMINAL SANCTIONS JUSTIFIED. JUSTICE REPRESENTATIVES STRESSED, HOWEVER, THAT THE USE OF CRIMINAL INVESTIGATIVE PROCEDURE DID NOT FORECLOSE ANY TYPE OF OUTCOME OF THE INVESTIGATION, INCLUDING CIVIL RELIEF MEASURES OR DISMISSAL OF THE CASE.

7. IN DISCUSSING CASE, JUSTICE REPRESENTATIVES EMPHASIZED THAT SOME RESULTS OF INVESTIGATION COULD BE BENEFICIAL TO EUROPEAN COUNTRIES INVOLVED. JUSTICE STRESSED BENEFITS OF LOWER, COMPETITIVE PRICES TO EUROPEAN EXPORTERS. JUSTICE ALSO NOTED THAT THERE WAS POSSIBILITY THAT SOME OF SECRET AGREEMENTS BEING INVESTIGATED MAY HAVE INVOLVED ALLOCATION OF CARGO BETWEEN PORTS AND RANGES AND THAT SUCH DIVERSION OF CARGOES AWAY FROM PARTICULAR PORTS AND RANGES COULD BE INJURIOUS TO NATIONAL INTERESTS OF INDIVIDUAL COUNTRIES.

8. BRIDGES AND OTHERS REITERATED OFTEN-EXPRESSED HOPE THAT LEGAL PROCEEDINGS COULD BE STAYED UNTIL CONSULTATIONS COMPLETED. IN RESPONSE, JUSTICE REPRESENTATIVES NOTED THAT NO LEGAL ACTION CURRENTLY TAKING PLACE OR EXPECTED UNTIL EARLY 1977. DEPARTMENT OF JUSTICE IS STILL READING DOCUMENTS, AND THERE WILL BE NO GRANT JURY HEARING OF EVIDENCE UNTIL NEXT YEAR. THIS INTERVAL SHOULD PROVIDE AMPLE TIME FOR CONSULTATIONS.

9. BRIDGES ALSO EXPRESSED EUROPEANS' CONCERN OVER LACK OF CONSULTATIONS ON THIS CASE PRIOR TO OCTOBER 27 MEETING. IN REPLY, JUSTICE NOTED THAT, IN ACCORDANCE WITH THE 1967 RECOMMENDATION OF THE OECD GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, THE USG HAD INFORMED THE EUROPEAN GOVERNMENTS IN 1975 OF THE BEGINNING OF THE CIVIL INVESTIGATION AND IN 1976 OF THE SWITCH TO CRIMINAL SANCTIONS; HENCE THERE HAVE BEEN TWO PREVIOUS OPPORTUNITIES FOR CONSULTATIONS. JUSTICE ALSO NOTED THAT OECD PROCEDURES PROVIDE FOR A DOUBLE OBLIGATION TO CONSULT. THE 1967 OECD RECOMMENDATION STATES THAT ALL MEMBER GOVERNMENTS SHOULD SUPPLY ANY INFORMATION RELEVANT TO AN INVESTIGATION WHICH ITS NATIONAL LAWS AND LIMITED OFFICIAL USE  
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PAGE 06 STATE 266737

INTERESTS PERMIT. IN ADDITION, OECD CODE ON MNE CONDUCT STATES THAT GOVERNMENTS SHOULD REFRAIN FROM ACTIONS TENDING TO REINFORCE NON-APPROVED RESTRICTIVE AGREEMENTS.

10. AT CONCLUSION, EUROPEAN REPRESENTATIVES EXPRESSED GRATITUDE FOR CONSULTATION, WHICH THEY FOUND HELPFUL ON A NUMBER OF COUNTS (PARTICULARLY IN ALLAYING MISAPPREHENSIONS ABOUT DEPUTY ASSISTANT ATTORNEY GENERAL ROSE'S SPEECH), AND SAID THEY MIGHT ASK TO MEET AGAIN. STATE AND JUSTICE REPRESENTATIVES EMPHASIZED THAT THEY WOULD BE HAPPY TO ARRANGE ADDITIONAL CONSULTATIONS, EITHER JOINT OR BILATERAL.

11. POSTS MAY WISH TO DRAW ON ABOVE IF QUESTIONED ON DEVELOPMENTS IN THIS INVESTIGATION. KISSINGER

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## Message Attributes

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**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Decaption Note:**  
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**Disposition Approved on Date:**  
**Disposition Authority:** KelleyW0  
**Disposition Case Number:** n/a  
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**TAGS:** EWWT, BE, FR, GC, NL, SW, UK, US  
**To:** BONN  
LONDON  
BRUSSELS  
PARIS  
STOCKHOLM  
THE HAGUE

HAMBURG  
OECD PARIS INFO COPENHAGEN  
OSLO  
TOKYO  
ATHENS  
HELSINKI  
LISBON  
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